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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,724	05/02/2006	Jakob Socher	0600-1059	3160
466 7590 01/06/2011 YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314				
EXAMINER WOOD, ELLEN S				
ART UNIT 1782		PAPER NUMBER		
NOTIFICATION DATE 01/06/2011		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary

Application No.

10/577,724

Applicant(s)

SOCHER, JAKOB

Examiner

ELLEN S. WOOD

Art Unit

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-16 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-16 and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 13-15 and 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Weder (US 2004/0237399).

In regards to claim 13, Weder discloses a wrapper for wrapping a flower pot and/or floral grouping or other item [abstract]. The wrapper is constructed of a sheet of material having a central decorative portion and a peripheral decoration [abstract]. The decorative wrapper can be used for fruit or candy boxes, and other boxed or unboxed items including nuts, vegetables, plant bulbs, and comestibles [0037]. Thus, a decorative band for packaging purposes.

Fig. 7 discloses a wrapper that is constructed of a sheet material [0060-0061], thus a thin film. The wrapper has two opposite free ends 24d and 26d [0060-0061 and fig. 7]. The sheet material extends longitudinally from a first of the two free ends to a second of the two free ends to form a first longitudinal edge, 40d, and a second longitudinal edge, 20d [0060-0061 and fig. 7].

The sheet material has at least one first portion, having a maximum width L1 [fig. 7]. In regards to Fig. 7, L1 is considered the width between 20d and 22d.

The sheet material has at least one second portion having a minimum width L2, the minimum width L2 being between one third and two thirds of the maximum width L1 [fig. 7 and 0063]. L2 is considered the width between 42d and 40d. The second portion has an adjoining edge 24d and 26d, thus the second portion is contiguous to said first portion and extending longitudinally.

The sheet material is configured to completely surround said periphery of said lateral annular wall of said food packaging [fig. 8 and 0037].

The first longitudinal edge, from the first of the two free ends to the second of the two free ends, is rectilinear and substantially parallel to a longitudinal axis of the band [fig. 7 and 0060-0061].

In regards to claim 14, Weder discloses that the second longitudinal edge has a convex profile along the first portion, 20d, and concave profile along the second portion, 22d, the convex profile being complementary to the concave profile [fig. 7].

In regards to claim 15, Weder discloses that the second longitudinal edge has a profile of an undulating line [fig. 7].

In regards to claim 24, Weder discloses that the undulating line is comprised of a plurality of alternating curves [fig. 7].

In regards to claims 25-26, Weder discloses that the free ends are configured to either overlap or abut one another in a completely surrounding said periphery of said lateral annular wall of said food packaging [0061 and fig. 8].

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weder (US 2004/0237399).

In regards to claim 16, Weder discloses a decorative wrap for completely surrounding a periphery of a food packaging material as previously discussed.

Weder is silent with regards to the maximum width L1 is substantially equal to a maximum height H of the lateral wall of the food packaging.

Weder discloses that the decorative wrapper can be designed for non-plant items such as baskets, gifts, gift boxes, fruit or candy boxes and other boxed or unboxed items including nuts, vegetable, plant bulbs and comestibles [0037]. It would be obvious to one of ordinary skill in the art at the time of the invention to substitute the maximum width L1 to be substantially equal to a maximum height of the lateral wall of the food packaging motivated by the expectation as to form a decorative wrapper that can be formed on various types of packages.

Response to Arguments

5. The 35 U.S.C 112, second paragraph rejections of claims 13-15 and 24-26 have been removed based on applicant's amendments.
6. The objection to claim 15 has been removed based on applicant's amendments.
7. Applicant's arguments filed 10/25/2010 have been fully considered but they are not persuasive.
8. The applicant argues that Weder's sheet is square. This square shape does not imply a longitudinal character of these edges.

In response, longitudinal is defined as a length that extends between two points. Thus, a square does imply longitudinal character of the edges. The applicant does not give a full explanation as to why a square shape would not imply a longitudinal character of these edges.

9. The applicant argues that Weder fails to disclose the recitation of claim 13 relating to the maximum width L1 and the minimum width L2. The applicant argues that the first and second portions merely correspond to surface areas of different appearance, and do not correspond to different portion of the film material itself.

In response, the examiner reads the claim language as if the film has a second portion that is different from the first portion of the film. The film of Weder has a film that has two differently design sections, wherein the second section is enclosed by the first section. Thus, the examiner considers the first section to be the combination of the first and second section, wherein the second section is from 42d to 40d. Thus, the minimum width would be 44d and the maximum width would be 28d. Also, the different portions

of the applicant's invention are also different appearances in film material itself (specification figs. 1-3).

10. The applicant argues that the two free ends are not rectilinear.

In response, the examiner views the two longitudinal edges as 24d and 26d. The band of Weder is a rectangle. If the band is rotated it is seen that the edges are rectilinear and parallel to the longitudinal axis. Thus, Weder discloses two longitudinal edges that are rectilinear.

11. The applicant argues that Weder does not disclose a band.

In response, the applicant provides the definition of a "band" from dictionary.com. The definition states "a strip of paper or other material serving as a label". The invention of Weder is shaped as a rectangle, thus one side is longer than the other. Thus, an elongated piece of material which is defined under a "strip". The strip of material serves as labeling purposes of Weder, thus the invention of Weder would be defined as a band. Weder discloses that the decorative wrapper is used for covering flower plots and wrappers for gift boxes. The wrappers disclosed by Weder completely surround the periphery of the lateral annular wall of the food packaging (fig. 8). Thus, Weder discloses a band that completely surrounds the periphery of the lateral annular wall.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELLEN S. WOOD whose telephone number is (571)270-3450. The examiner can normally be reached on M-F 730-5 with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ELLEN S WOOD/
Examiner, Art Unit 1782

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1782